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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,234	12/15/2000	Brian J. Roberts	3345 - 2212	2950
26875	7590	09/08/2004	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			DEXTER, CLARK F	
			ART UNIT	PAPER NUMBER
			3724	23
DATE MAILED: 09/08/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/738,234	ROBERTS ET AL.
	Examiner Clark F. Dexter	Art Unit 3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 26-29,31 and 41-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 28 is/are allowed.
- 6) Claim(s) 26,27,29,31 and 41-44 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

1. The response filed on September 29, 2003 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 26, 27, 29, 31 and 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer, pn 5,492,398.

Schafer discloses a dispensing structure with almost every structural limitation of the claimed invention but lacks the housing being mounted adjacent the counter top of a

counter. However, the Examiner takes Official notice that it is old and well known to provide counter tops for supporting dispensing devices for various known benefits including displaying and/or facilitating access to the dispensing device. Feola teaches one example of such an arrangement. Further, applicant admits that the device of Schafer is mounted over the counter (see the first paragraph on page 42 of the remarks of the subject response). Such location can clearly be considered as "adjacent" to the countertop. Therefore, it would have been obvious to one having ordinary skill in the art to provide a counter having a counter top and providing the dispensing device adjacent thereto for supporting the dispensing device of Schafer for the well known benefits including those described above.

Further, Schafer lacks the front and rear covers each hingedly mounted to a remainder of the housing. However, the Examiner takes Official notice that such a housing configuration is old and well known in the art for various known benefits including providing increased access into the housing. For example, housings are known which are similar to that of Schafer but have the top and rear portions of the housing form an integral L-shaped housing member that is hingedly mounted to the base such that upon opening the front cover, the top/rear member is free to be opened thus giving increased access to inside the housing. As one example, Tigner discloses a dispenser wherein the rear cover is hingedly mounted to a remainder of the housing. Additionally, Mell discloses one example of two covers hingedly mounted to a remainder of a housing for increased access to the area within the housing. Further, Casperson et al. provides one example of a dispenser wherein a dispensing door is provided on both

sides of the dispenser so that dispensing may be performed from either or both sides. Therefore, it would have been obvious to one having ordinary skill in the art to provide such a housing configuration on the device of Schafer for the well known benefits including that described above.

Further, regarding claims 41-43, the Examiner takes Official notice that arcuate dispenser covers are old and well known in the art and provide various well known benefits. Examples of such arcuate cover configurations are disclosed by West and Mell. Therefore, it would have been obvious to one having ordinary skill in the art to provide one or more arcuate cover portions on the dispenser of Schafer for the well known benefits.

Allowable Subject Matter

4. Claim 28 is allowable over the prior art of record.

Response to Arguments

5. Applicant's arguments filed September 29, 2003 have been fully considered but they are not persuasive. Applicant is invited to contact the Examiner to discuss any issues and/or proposals that may expedite allowance of the present application.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (703)308-1404. The examiner can be reached Monday through Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (703)308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Clark F. Dexter
Primary Examiner
Art Unit 3724**

cfd
September 7, 2004